

TITLE 7 HEALTH
CHAPTER 18 SWIMMING POOLS
PART 2 PUBLIC SWIMMING POOLS, SPAS AND BATHS: GENERAL PROVISIONS

7.18.2.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[7.18.2.1 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.2 SCOPE: Owners and operators of public swimming pools, public spas, public baths, or other public bathing attractions.

[7.18.2.2 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.3 STATUTORY AUTHORITY: NMSA 1978, Sections 74-1-1 through 74-1-16.

[7.18.2.3 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.4 DURATION: Permanent.

[7.18.2.4 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.5 EFFECTIVE DATE:

[7.18.2.5 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.6 OBJECTIVE: To protect public health and safety by establishing standards and provisions for the regulation of public swimming pools, spas, baths, and other public bathing attractions.

[7.18.2.6 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.7 DEFINITIONS. As used in the public swimming pool rules, unless otherwise required by context, the following definitions apply.

A. Abbreviations.

(1) "ANSI" means American National Standards Institute.

(2) "ASHRAE" means American Society of Heating, Refrigeration, and Air Conditioning Engineers, Inc.

(3) "CO" means certified operator.

(4) "CPSC" means Consumer Product Safety Commission (U.S.).

(5) "CT" means the concentration (C) of chlorine in ppm multiplied by time (T) in minutes.

(6) "DE" means diatomaceous earth.

(7) "DPD" means Diethyl-P-Phenylene Diamine.

(8) "fps" means feet per second.

(9) "gpm" means gallons per minute.

(10) "mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available.

(11) "NSF" means National Sanitation Foundation.

(12) "ppm" means parts per million. See notation under mg/l for use.

(13) "TDH" means total dynamic head.

B. "Adjacent" means adjoining, contiguous, or both.

C. "Approved Water Supply" means water from a source, supply or system approved by the department that is properly located, protected, and operated. Water shall be easily accessible, adequate, and of safe and sanitary quality.

D. "Approved" means accepted in writing by the department.

E. "Architect" means any individual currently registered and in good standing under the "New Mexico Architectural Act".

F. "Athletic Club" means a facility constructed to provide athletic or physical conditioning for its members, guests, or patrons. It includes, but is not limited to, racquetball clubs, health spas, fitness facilities, aerobics instruction facilities, etc.

G. "Attendant" is a person certified by the American Red Cross or an equivalent organization in first aid and CPR and otherwise trained to deal with safety hazards related to the particular attraction at which they are employed.

H. "Barrier", see Enclosure.

- I.** “Bather” means any person using a public pool and adjoining deck area for the purpose of water sports, recreation, therapy or related activities.
- J.** “Bather Load” means the number of persons in the pool or spa at any given moment or during any stated period of time.
- K.** “Bathhouse” means a structure containing dressing rooms, showers or toilet facilities for use with an adjacent public pool.
- L.** “Bathing Attraction”, see Special-Use Pools.
- M.** “Booster Pump System” means a system whereby one or more hydrotherapy jets are activated by the use of a pump, which is completely independent of the filtration and heating system of a spa. Also, a device used to provide hydraulic support for certain types of equipment such as cleaning systems, gas chlorinators and solar systems.
- N.** “Builder” means a person licensed in the state of New Mexico by the construction industries division, who, undertakes, or offers to undertake, or submits a bid, to construct, alter, repair, or improve any public pool, spa pool or bathhouse and the appurtenances thereto.
- O.** “Contaminant” means any physical, chemical, or biological substance present in the public pool water that may adversely affect the health or safety of the bather or the quality of the water.
- P.** “Certified Operator” means a person who has complied with all applicable requirements for certification as a pool operator as specified in this regulation.
- Q.** “Circulation System” means an arrangement of mechanical equipment or components connected by piping to and from a public pool in a closed circuit. The function of a circulation system is to direct water from the public pool causing it to flow through the various system components for purposes of clarifying, heating, purifying and returning the water back to the original body of water.
- R.** “Circulation Equipment” means the mechanical components that are a part of a public pool’s circulation system. Circulation equipment may include, but is not limited to, categories of pumps, hair and lint strainers, filters, valves, gauges, meters, heaters, surface skimmers, inlet/outlet fittings, and chemical feeding devices. The components have separate functions, but when connected to each other by piping, perform as a coordinated system for purposes of maintaining pool, spa or bath water in a clear, sanitary, and desirable condition for use.
- S.** “Combined Chlorine (CC)” means that portion of the total residual chlorine that is combined with ammonia or nitrogen compounds and will not react chemically with undesirable or pathogenic organisms.
- T.** “Cross Connection” means an unprotected connection between the piping carrying potable water and the piping or fixtures that carry other water or other substances.
- U.** “Deck” means the four foot area around the pool beginning at the pool coping.
- V.** “Deck Level Diving Board” means a diving structure or device rising no more than 18 inches above design water level.
- X.** “Department” means the New Mexico environment department
- Y.** “Department representative” means the secretary of the environment department or his/her designees.
- Z.** “Design Water Level” is defined in one of the following ways:
- (1) “Skimmer System” means the design water level shall be at the midpoint of the normal operating range of the skimmer.
 - (2) “Overflow System” means the design waterline shall be the top of the overflow rim of the gutter system.
- AA.** “Enclosure” means a wall, building, fence or any combination of these that control access to the pool proper. This barrier shall be of such construction as to provide protection for the safety of the public and to control access to the pool.
- BB.** “Engineer” means any individual currently registered and in good standing under the “New Mexico Engineering and Surveying Act”.
- CC.** “Fill and Draw Public Bath” means a public bath that shall be completely drained, cleaned, and disinfected prior to each use.
- DD.** “Flow-Through Public Bath” means a public bath where there is circulation of water through the bath from some natural or developed source, and where the out flowing water is discharged to waste.
- EE.** “Flume” means an inclined channel for conveying water.
- FF.** “Free Available Chlorine (FAC)” means that portion of the total residual chlorine remaining in chlorinated water that is not combined with ammonia or nitrogen compounds and will react chemically with undesirable or pathogenic organisms.

GG. “General-Use Pool” means any public pool other than a limited-use or special-use public pool. This includes, but is not limited to, general admission pools, recreation parks, colleges and universities, organizational camps, clubs or athletic clubs, recreation districts, city, municipal, county and state pools and pools operated by other political subdivisions.

HH. “Guest Protection Zone” means a defined and prescribed area of a public pool that a lifeguard is responsible for monitoring.

II. “10/20 Guest Protection Standard” means a nationally recognized professional lifeguard system which enables and requires a lifeguard to consistently and completely scan his/her assigned guest protection zone within 10 seconds and, should the guest need assistance, reach the guest to begin managing an incident within 20 seconds.

JJ. “Handhold” means a structure not over twelve inches above the water line around the perimeter of the pool wall, affording physical means for the bather to grasp the pool sides.

KK. “Horseplay” means any unsafe activity endangers the pool users or by-standers.

LL. “Impervious” means a material that does not allow another substance to pass through or penetrate.

MM. “Instructor” means a currently certified American Red Cross Water Safety Instructor, or a person having equivalent certification as determined by the department.

NN. “Lifeguard” means a person certified as a lifeguard by the American Red Cross or by the National Pool and Waterpark Association or an equivalent organization.

OO. “Lifesaving Equipment” means emergency equipment and barrier protection.

PP. “Limited-Use Pool” means any public pool, located at, and operated in conjunction with a facility having six or more living or guest units, including:

- (1) travelers accommodations, including hotels, motels, inns, bed and breakfast facilities;
- (2) apartments, condominiums, mobile home parks;
- (3) schools, boarding schools, group homes;
- (4) businesses that employ ten or more people and own a swimming pool or spa that is for the exclusive use of employees and their guests; or
- (5) home owners associations, if the pool is for the exclusive use of the association members and their guests only and no memberships are sold to outside persons.

QQ. “New Construction” means the activity of building or installing a public pool, and its component parts, where no such structure has previously existed or where previously existing pool or spa structures have been removed.

RR. “Operating Water Level Range” means the operating water level defined in one of the following ways according to the type of pool construction:

- (1) “Skimmer System” means one inch above to one inch below the midpoint of the operating range of the skimmer throat, or manufacturer’s maximum stated operating range.
- (2) “Overflow Gutter System” means the manufacturer’s maximum stated operating range above the design water level.

SS. “Operator”, see Certified Operator.

TT. “Person” means:

- (1) any person, individual, any public or private firm, partnership, corporation, company, society, association, and every managing body, officer, agent or employee thereof; or
- (2) the state, local government, or any agency, institution or political subdivision thereof, including any governing or managing body.

UU. “Plummet” means a line perpendicular to water surface and extending vertically to a point located at the front end of the diving board and at the centerline directly in front of the diving board.

VV. “Pool Slide” means a slide at a public pool, which has a length less than twenty feet, not including the platform, and a height of less than 12 feet.

WW. “Private Pool” means:

- (1) any pool or spa owned by no more than four individuals, either jointly, individually or through association, incorporation or otherwise, for the exclusive use of the occupants thereof and their personal guests; or
- (2) a swimming pool owned by a business employing fewer than ten persons if the pool is for the exclusive use of employees and their guests.

XX. “Public Bath” means any manmade structure and its appurtenances intended for public use, other than a plumbing fixture, containing an artificial body of water that is intended to be used individually or collectively for bathing or recreation, regardless of whether a fee is charged for its use. Public baths shall only be the fill-and-draw or flow-through type.

YY. “Public Spa Pool” means any manmade structure and its appurtenances containing an artificial body of water that is intended to be used individually or collectively by persons for bathing, relaxation, or therapeutic use and which is not a fill-and-draw or a flow-through public bath, regardless of whether a fee is charged for its use. It may include, but not be limited to, hydrotherapy jet circulation, hot water, cold water, mineral baths, air induction bubbles, or any combination thereof, excluding fill-and-draw and flow-through public baths. Terminology for a spa includes, but is not limited to: therapeutic pool, rehabilitation pool, hydrotherapy pool, and whirlpool, hot spa or hot tub. Spas may be general use or limited use.

ZZ. “Public Pool” means any manmade structure and its appurtenances containing water that is expressly designated or used with the knowledge or consent of the owner or operator for swimming, water recreation, or bathing for the use of any segment of the public. This term does not include residential housing or lodging facilities having five or less living units. The term “public pool” includes all general-use, limited-use and special-use public pools or public spa pools, public wading pools, spray pads, bathing attractions and public baths. Plumbing fixtures associated with a specific lodging room or fill-and-draw hydrotherapy tubs used by and exclusively for sport team member training and injury rehabilitation are excluded. The term “public pool” includes, but is not limited to, public pools owned or operated by:

- (1) travelers’ accommodations including hotels, motels, inns, bed, breakfast, hostels and recreational vehicle parks;
- (2) residential housing or lodging facilities having six or more living units;
- (3) apartments or apartment complexes, condominiums and mobile home parks;
- (4) recreation parks;
- (5) colleges or universities;
- (6) schools and group homes;
- (7) organizational camps;
- (8) clubs and athletic clubs;
- (9) associations;
- (10) business establishments for their patrons or employees;
- (11) private persons with pools that are open to the public;
- (12) recreation districts; or
- (13) cities, municipalities, counties, the state of New Mexico or other political subdivisions.

AAA. “Public Wading Pool” means an artificial structure, and its appurtenances containing water two feet deep or less which is expressly designated or which is used with the knowledge or consent of the owner or operator for wading or recreational bathing and which is for the use of any segment of the public, whether limited to patrons of a companion facility or not.

BBB. “Recirculation Interval” means the time required to circulate the entire volume of the pool water through the circulation system. Also see “turnover rate”.

CCC. “Remodel” means but is not limited to altering the design, modifying plumbing, or creating structural changes to pool, spa, bath, spray pad, deck or bathhouse.

DDD. “Renovation” means the activity of restoring all or part of a pool, spa, bath, or spray pad structure and its component parts back into good condition, including the rebuilding or replacing of worn and broken parts or components.

EEE. “Repair” means maintenance or replacement of equipment that meets current ordinance requirements with comparable size and equipment type.

FFF. “Secretary” means the secretary of the New Mexico environment department

GGG. “Service Animal” means a guide dog, signal dog, or other animal trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, or providing minimal protection or rescue work, such as pulling a wheelchair or fetching dropped items.

HHH. “Spa”, see Public Spa Pool.

III. “Special-Use Pool” means a public pool that is designed specifically as a bathing attraction or for sporting or recreational purposes and may include, but is not limited to, special features such as:

- (1) wave pools;
- (2) diving pools;
- (3) splash pools;
- (4) zero depth pools;
- (5) waterpark slides;
- (6) vortex pools;

- (7) interactive play attractions;
- (8) watercourse rides;
- (9) activity pools;
- (10) temporary use pools;
- (11) portable pools; or
- (12) public promotion pools.

JJJ. “Spray Pad” means a constructed area for use by bathers in which water is sprayed, but is not allowed to pond.

KKK. “Swimming Pool”, see Public Pool.

LLL. “Supplemental Disinfectant” means a department approved disinfectant that is intended to augment water quality in a public pool or spa and provide disinfection.

MMM. “Test Kit” means a testing device approved by the secretary, capable of measuring all water quality parameters required in this section.

NNN. “Total Available Bromine (TAB)” means the sum of both the free available and combined bromine.

OOO. “Total Available Chlorine (TAC)” means the sum of both the free available and combined chlorine.

PPP. “Tripping Hazard” means any abrupt rise, spalling walks, sunken or raised walkways, or other condition that could cause tripping.

QQQ. “Turnover Rate” means the rate of flow, in gallons per minute, required to circulate the entire volume of the pool water through a circulation system.

RRR. “Turnover Time” means the time required to circulate the entire volume of the pool water through a circulation system. Also see Recirculation Interval.

SSS. “Valve” means any device in a pipe that will partially or totally obstruct the flow of water, such as a ball, gate or globe valve; or permit flow in one direction only, such as a check or foot valve.

TTT. “Variance” means written permission from the department for operation of a public pool, spa, bath, or wading pool using alternative measures that will provide public health and safety protection that is equal to or greater than the protections provided in this rule.

UUU. “Walking Surface” means any surface used as a direct access surface for a pool, as well as the area leading to and from the pool to locker, restroom or change room facilities.

VVV. “Waterpark Slide” means a slide at a public pool, which has a length of at least twenty feet, not including the platform, and a height of greater than 12 feet.

WWW. “Water Surface” means that portion of the pool surface where swimming is allowed.

[7.18.2.7 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.8 ADOPTION BY REFERENCE: Outside standards, listings, and publications referenced in this rule are part of this rule.

[7.18.2.8 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.9 ENFORCEMENT AUTHORITY:

A. Private pools shall not be subject to the provisions of this regulation or 7.18.3 NMAC, Public Swimming Pools, Spas and Baths: Design and Construction or 7.18.4 NMAC, Public Swimming Pools, Spas and Baths: Operations and Maintenance or 7.18.5 NMAC, Public Swimming Pools, Spas and Baths: Fees.

B. Department representatives shall be responsible for the enforcement of this rule.

[7.18.2.9 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.10 CONSTRUCTION PERMITS:

A. No person shall construct, renovate, or remodel a public pool or bathhouse or alter any such structures without first:

- (1) submitting a construction permit application that shall include plans, specifications, supporting material, and other information required by the department;
- (2) receiving a construction permit; and
- (3) paying all applicable fees.

B. No person shall deviate from the approved plans and specifications during the construction, renovation, or remodeling of public pool facilities described in this rule without first receiving prior written approval from the department.

- C. Construction permits will be issued only to the owner or authorized agent of the owner.
 - D. A construction permit may be issued only when the facility owner or agent has provided sufficient information for the department to determine that the public pool will:
 - (1) operate continuously in a clean and sanitary manner;
 - (2) not constitute a menace to public health and safety; and
 - (3) provide health and safety protection equal to or greater than that required by the public swimming pool rules.
 - E. Plans and specifications for a proposed public pool that demonstrate a new technology or alternative mode of operation not contemplated in these rules shall apply for a variance.
 - F. The department shall either issue a construction permit, issue a construction permit with conditions, or deny the construction permit. The department may revoke a construction permit under 7.18.2.19 NMAC or suspend a construction permit if the department determines that the provisions of the public swimming pool rules are not met.
 - G. The department shall notify the applicant in writing that the application is complete or incomplete within 30 days of receipt of the application.
 - H. Once the department determines that the application is complete, it shall have 30 days to issue the permit, issue the permit with conditions, or deny the permit. All permit denials shall be in writing stating the reason the permit was denied. The applicant for a permit that has been denied may request an administrative hearing. The request for a hearing shall be made in writing to the department within 15 calendar days after notice of the department's decision has been received by the applicant. Hearings on permit denials shall be held in accordance with 7.18.2.22 NMAC.
- [7.18.2.10 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.11 PLANS AND SPECIFICATIONS:

- A. Clear and legible plans and specifications shall be prepared, stamped, and signed by a professional engineer or architect registered in the state of New Mexico. The department may grant specific exemptions to this requirement when plans accurately depict the proposed pool and address all of the swimming pool rules' requirements; and where, in the department's judgment, no architectural or engineering problems are present.
- B. Plans for each public pool shall be submitted in duplicate, drawn to scale and shall include:
 - (1) one plan view;
 - (2) one longitudinal section;
 - (3) one transverse section through the main drain;
 - (4) one overall site plan showing the pool in relation to other facilities in the area with true north indicated;
 - (5) a detailed view of the equipment layout and the associated room or location;
 - (6) location of all above and below ground utilities;
 - (7) one piping schematic showing piping, pipe size, inlets, main drains, skimmers, gutter outlets, vacuum fittings, and all other appurtenances connected to the pool piping system;
 - (8) one cross section of the step treads and risers;
 - (9) means of disposing of backwash and wastewater;
 - (10) specifications of all required components;
 - (11) deck drains, if required;
 - (12) location of wastewater receptacle;
 - (13) emergency phone location;
 - (14) emergency pump shut-off switch location;
 - (15) location of any lifeline or lane anchors;
 - (16) location, layout, and specifications of the pool enclosure, including windows, HVAC (heating, ventilation, and air conditioning system), gates and doors; and
 - (17) other information the department may require.
- C. Plan notes denoting "work by others" or an equivalent phrase shall not be acceptable as a substitute for scale drawings, details and specifications.
- D. Plans shall include the following information in tabulated form:
 - (1) legal address of the facility;
 - (2) location of the facility if different from legal address;
 - (3) owner's name, address, and telephone number;
 - (4) architect or engineer's name, address, and telephone number;

- (5) surface area of pool;
- (6) pool volume, recirculation interval, turnover rate, filter rate/unit area, type of filter and total system head loss;
- (7) manufacturer, make and model numbers of the pump, filter, and automatic chemical feed apparatus, filter head loss (clean and dirty), pump curve showing design flow rate and total dynamic head, hydraulic engineering calculations that are acceptable to the department;
- (8) source of water used at the pool; and
- (9) other information the department may require.

E. Plans shall include the location of emergency telephones, which may be either within the public pool enclosure or at an adjacent support facility, that are accessible at all times the pool is open. When an emergency telephone is located within an adjacent support facility, the owner shall indicate on the plans how the telephones can be accessed during operating hours and how the public will be notified of the emergency telephone location.

F. Nothing in the swimming pool rules shall prevent the department from requiring the correction of errors in plans and specifications after those plans have been approved or the specifications accepted. The department may also halt construction operations conducted pursuant to approved plans and specifications when such construction is in violation of this or any other law or regulation. The department may also revoke any approvals that are issued in error.

G. Public pool structures that exist prior to the swimming pool rules' promulgation and that do not meet the rules' provisions shall be allowed until such time as the public pool is remodeled or renovated.

[7.18.2.11 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.12 OPERATING PERMITS:

A. No person shall operate a public pool, spa, or bath without an operating permit from the department. Each public pool at a facility or site shall be permitted separately.

B. Operating permits shall be issued annually after completion of a department inspection that demonstrates compliance with the public swimming pool rules.

C. No person shall operate a public pool without first:

- (1) securing an approved final construction inspection from the department if plans are required;
- (2) making application for a permit to operate such pool;
- (3) securing a permit from the department; and
- (4) paying all applicable fees.

D. The permit shall remain the property of the department and may be removed by the department representative when a permit is suspended or revoked.

E. The department shall grant permission to operate a seasonal public pool only upon completion of a satisfactory pre-opening inspection.

F. The department shall grant permission for continuous year-round operation of a public pool only upon completion of a satisfactory inspection prior to renewal of an annual operating permit.

G. The designated certified operator of a seasonal or year round public pool shall be present for the seasonal pre-opening or permit renewal inspection.

H. The certified operator shall request an inspection to receive an annual operating permit prior to the opening date of operation of any public pool.

I. Operating permits are non-transferable between facilities or persons.

[7.18.2.12 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.13 CERTIFIED OPERATOR REQUIREMENTS:

A. All public pools, spas, and baths shall have a certified operator on staff or by contract who is available on a daily basis.

B. Operators of public pools shall be thoroughly knowledgeable of public pool operation best practices, laws, and rules, and shall be certified through a department approved training course in swimming pool sanitation and safety.

C. The department may grant certification following presentation and confirmation of certification from other approved organizations.

D. Certifications shall expire three years following date of issue or on the expiration date for certifications issued by other approved certifying organizations.

[7.18.2.13 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.14 INSPECTION FREQUENCY: The department shall inspect each public pool at least annually and shall make as many re-inspections as necessary for enforcement of the public swimming pool rules.
[7.18.2.14 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.15 SERVICE OF NOTICE:

A. Notice shall be deemed to be properly served when the original or a true copy of the inspection report form or other written notice has been delivered personally to the permit holder, the permit holder's agent, or a certified pool operator; or when such notice has been sent by registered or certified mail to the last known address of the permit holder or certified pool operator on file with the department.

B. A copy of such notice shall be filed in the department's records.
[7.18.2.15 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.16 TEMPORARY SUSPENSION OF PERMITS:

A. The department may suspend a permit at any time when it determines that there is a violation that may affect public health or safety.

B. Whenever a permit holder or operator has failed to comply with any of the requirements of this rule, the permit holder or operator shall be notified in writing.

C. The notice shall:

- (1) identify and reference the conditions that violate the swimming pool rules;
- (2) specify the time period within which such condition shall be brought into compliance, if any;
- (3) state that failure to comply with any notice issued pursuant to the swimming pool rules may result in immediate permit suspension; and
- (4) advise that the permit shall be suspended at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the permit holder within the five-day period.

D. Immediate suspension: Notwithstanding other provisions of this regulation, whenever a department representative finds a condition in a public pool's operation that constitutes an immediate hazard to public health, welfare, or safety, the department representative may, without prior warning, notice, or hearing, issue a written notice to the permit holder or operator citing such condition. The department's notice shall state that the permit is immediately suspended and all swimming or bathing of any kind is to be immediately discontinued.

E. All persons receiving a permit suspension notice shall immediately comply with the notice's terms.

F. For immediate suspensions, suspensions upheld after a hearing, and where no request for a hearing has been received, the department shall post a sign stating that the pool is closed.

G. The department may also require a written compliance plan.
[7.18.2.16 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.17 TEMPORARY SUSPENSION OF OPERATOR CERTIFICATION:

A. The department may suspend a certified pool operator's certification if:

- (1) a pool he or she is operating has had its operating permit suspended or revoked; or
- (2) the department determines that the operator has committed a violation that may affect public health or safety.

B. A department representative shall notify the certified pool operator in writing stating the reason the certification is subject to suspension and advising that the certification shall be suspended at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the certified operator within the five-day period.
[7.18.2.17 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.18 REINSTATEMENT OF SUSPENDED PERMITS AND CERTIFICATIONS:

A. Any person whose permit has been suspended may make application for reinstatement of the permit in writing to the department. Within five working days following receipt of such a request, a department representative shall inspect the pool or premises or both. If the applicant is in compliance with the requirements of the swimming pool rules and other applicable laws, regulations, and ordinances, the permit shall be reinstated.

B. Any person whose operator's certification has been suspended may make application in writing for re-instatement of their certification. Within five working days following receipt of such a request, the department shall ascertain the status of compliance with the requirements set forth in any administrative action or

hearings. If the applicant is in compliance with the requirements of the public swimming pool rules, an administrative action or hearing, and other applicable laws, regulations and ordinances, the certification shall be reinstated.

C. The department may require a swimming pool operator or employee to attend additional training courses in pool sanitation and safety.

[7.18.2.18 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.19 REVOCATION OF PERMIT:

A. A permit may be revoked when:

- (1) it appears that a violation may affect public health or safety;
- (2) any conditions of a permit are violated;
- (3) there are willful or repeated violations of any of the requirements in the public swimming pool

rules;

(4) the permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact; or

- (5) the owner or the owner's agent interferes with the department's performance of its duties.

B. Prior to such revocation, the department shall provide an opportunity for a hearing. A department representative shall notify the permit holder in writing stating the reason the permit is subject to revocation and advising that the permit shall be revoked at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the permit holder within the five-day period.

C. Owners and operators of public pools who fail to comply with the provisions of a suspension notice or open their facility to the public without an approved permit will be subject to the penalties described in 7.18.2.56 NMAC.

[7.18.2.19 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.20 REVOCATION OF POOL OPERATOR CERTIFICATION:

A. A pool operator certification may be revoked when:

- (1) there are willful or repeated violations of any requirements in the public swimming pool rules;

(2) the permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact; or

- (3) the certified pool operator interferes with the department in the performance of its duties.

B. Prior to such revocation:

(1) The department shall provide an opportunity for a hearing. The hearing officer shall be appointed by the secretary of the environment department.

(2) A department representative shall notify the certified pool operator in writing stating the reason the certification is subject to revocation and advising that the certification shall be revoked at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the certified operator within the five-day period.

[7.18.2.20 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.21 OTHER REMEDIES: [RESERVED]

[7.18.2.22 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.22 HEARINGS:

A. Hearings provided for in the public swimming pool rules shall be held within 15 working days of a petitioner's delivery of a hearing request to the department.

B. Hearings provided for in this regulation shall be conducted in accordance with 20.1.5 NMAC.

[7.18.2.23 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.23 VARIANCE:

A. The department may grant a variance from the public swimming pool rules' requirements through written permission from the department for operation of a public pool using alternative measures that will provide public health and safety protection that is equal to or greater than the protections provided in the public swimming pool rules.

B. Specific variance requests shall be made by the owner or the owner's designated agent. Designated agents shall provide written documentation signed by the owner that they are representing the owner regarding the specific variance application. All variance applications shall be signed by the owner.

C. It is the applicant's responsibility to provide all necessary information to support the request for a variance.

D. Any person applying for a variance from any provision of the public swimming pool rules shall do so by filing a written application with the department. Applications shall:

- (1) be made on forms obtained from the department;
- (2) state the applicant's name and mailing address;
- (3) state the date of the application;
- (4) state the provision or provisions of this regulation for which the variance is sought;
- (5) state in detail the extent to which the applicant wishes to vary from the provision or provisions;
- (6) state the period of time for which the variance is sought;
- (7) state why the applicant believes the variance is justified;
- (8) be accompanied by any relevant documents or material which the applicant believes would support the application for a variance; and
- (9) contain other relevant information the department may request.

E. Within twenty days following receipt of a completed variance application, the department shall grant the variance, grant the variance subject to conditions, or deny the variance. The action taken by the department shall be by written order, a copy of which shall be sent to the applicant. The order shall:

- (1) state the applicant's name and address;
- (2) state the date the order is made;
- (3) describe the location of the public pool or public bath; and
- (4) state the department's decision and its reasons.
 - (a) If a variance is granted, the order will state the effective period of time and any conditions that apply.
 - (b) All variances shall be reviewed annually. If variance conditions have not been met, a permit shall not be issued.

F. Petitioners who are dissatisfied with the department's decision may request a hearing from the department secretary.

(1) The request shall be made in writing to the department secretary within 15 calendar days after notice of the department's decision has been received by the petitioner.

(2) Unless a request has been received within the 15 calendar day period, the department's decision shall be final.

(3) If a request has been received within the 15 calendar day period, the department secretary or his/her designated representative shall hold a hearing within 15 days after the receipt of the request.

G. The department shall notify the petitioner by certified mail of the date, time and place of the hearing.

H. In the hearing, the burden of proof shall be upon the petitioner.
[7.18.2.23 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.24 VOIDING OF VARIANCES:

A. An approved variance shall be void one year after the date of approval if the permitted activities granted thereby have not been utilized. If the department voids a variance for any reason, the department will serve written notice on the permit holder.

B. The department may void a variance if subsequent events show that the variance has created or may create conditions hazardous to the public health, safety, or welfare.

C. An approved variance shall be void if it is utilized in a way that violates the terms of the variance. Voiding a variance is in addition to, and not instead of, other remedies available to the department at any time for violation of the public swimming pool rules.

D. Any person who has been granted a variance shall sign a department approved indemnification and release of liability statement form.

[7.18.2.24 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.25 RIGHT OF ENTRY:

A. Upon presentation of credentials, department representatives may enter any premises where a public pool is located or where records required by the public swimming pool rules are located during the public pool's operating hours.

B. When entry is denied by the property owner, the department may seek a district court order to:

- (1) have a right of entry to, upon, or through any premises where a public pool is located;
- (2) have a right of entry on any premises where any records required by the public swimming pool rules or by permit condition are kept;
- (3) have access to and copy any records that the public swimming pool rules or a permit requires the facility to maintain;
- (4) inspect any premises or equipment to determine compliance with the public swimming pool rules or any permit condition; and
- (5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit condition.

[7.18.2.25 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.26 to 7.18.2.50 [RESERVED]

7.18.2.51 CONSTRUCTION: This Part shall be liberally construed to carry out its purpose.

[7.18.2.51 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.52 SEVERABILITY: If any provision or application of this Part is held invalid, the remainder of this Part, or its application to other situations or persons, shall not be affected.

[7.18.2.53 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.53 REFERENCES IN OTHER REGULATIONS: Any reference to the public swimming pool regulations or to any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public swimming pool rules" in this Part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.

[7.18.2.53 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.54 SAVINGS CLAUSE: Repeal or supersession of prior versions of this Part or the public swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.

[7.18.2.54 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.55 COMPLIANCE WITH OTHER REGULATIONS: Compliance with the public swimming pool rules or this Part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[7.18.2.55 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.56 PENALTY: Any person who violates any provision of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.

[7.18.2.56 NMAC - Rp 7.18.2 NMAC, _/_/_]

7.18.2.57 LIMITATION OF DEFENSE: The existence of a valid permit for the installation, modification or operation of a pool shall not constitute a defense to a violation of any section of this rule, except the requirement for obtaining a permit.

[7.18.2.57 NMAC - Rp 7.18.2 NMAC, _/_/_]